IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10382 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASLAM N SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. Petitioner - Aslam @ Bapu Nazir Mohammed Shaikh, came to be detained by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, on November 22, 1999 in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities

Act, 1985 ("PASA Act" for short).

#. The detaining authority took into consideration one offence registered against the detenue with Sarkhej Police Station and also statements of two anonymous witnesses in respect of the incidents dated October 26, 1999 and November 1, 1999. The detaining authority recorded subjective satisfaction for undertaking exercise of powers under section 9(2) of the PASA Act of not disclosing the identity of the witnesses. The detaining authority found that the detenue is a "dangerous person". That his activities are detrimental to public order and that he is required to be immediately prevented from pursuing his illegal and anti-social activities. According to the detaining authority, less drastic remedies under the ordinary law are not possible to be resorted and ultimately the order came to be passed.

#. The petitioner has challenged the order of detention on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner submitted that the petitioner is branded as dangerous person. For that purpose, the detaining authority has placed reliance on one registered offence and statements of two anonymous witnesses have been recorded by the detaining authority on 21.11.99. The said statements have been verified on 22.11.99 and the order is passed on that very day. The authority therefore, had no time to undertake exercise of verifying the incidents narrated by the witnesses and fear expressed by them qua the petitioner. The exercise of powers under section 9(2) of the PASA Act therefore, is improper, which would affect the right of the detenue of making an effective representation. Mr. Prajapati submitted that the statements cannot be looked into. The result would be that the order would be based only on one registered offence. There is no material to indicate any other antecedents of the petitioner or involvement in any criminal activities. Singular offence cannot form the basis for branding a man as dangerous person as he cannot be considered as habitual offender. Mr. Prajapati, therefore, submitted that the satisfaction recorded by the detaining authority about the petitioner being dangerous person and his activities being detrimental to public order would stand vitiated and the petition may, therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, at the outset, it may be noted that the two statements of anonymous witnesses relied upon by the detaining

authority suffer from the defect of non-disclosure of identity of the witnesses. On the basis of an improper exercise of powers under section 9(2) of the PASA Act, the statements are recorded by the sponsoring authority on November 21, 1999. They have been verified by the detaining authority on November 22, 1999 and the order is passed by the detaining authority on the same day.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenue while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenue of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

Thus, the statements cannot be looked into.

#. This leaves behind only one offence registered against the detenue in which he is alleged to have been involved in offence punishable under section 147, 148, 149, 323, 325, 333, 186, 504 of IPC and Section 135 of Bombay Police Act. The petitioner is branded as a dangerous person. If the definition of a dangerous person as given in Section 2 (c) is seen, it runs as under.

"2(c) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences

punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under chapter V of the Arms Act, 1959."

A plain reading of this definition indicates that for being branded as dangerous person, a person must be habitually committing or attempting to commit or abetting the commission of an offence punishable under Chapter XVI or XVII of the Indian Penal Code or any offence punishable under section 5 of the Bombay Police Act. There is no material to indicate the involvement of the petitioner in any other criminal activity than the registered offence. The detaining authority has not filed any affidavit, and therefore, the petition deserves to be allowed on the above stated ground namely, improper exercise of powers under section 9(2) of the PASA Act and the petitioner not falling within the definition of "dangerous person" on the basis of which the detention order is passed.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 22, 1999 is quashed and set aside. The detenue Aslam Bapu Nazir Mohammed Shaikh is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

#. Mr. Prajapati states that the detenue/petitioner is transferred from Bhuj Prison to Jamnagar Jail and requests to direct to send writ to Jamnagar Jail. The writ therefore, to be sent to Jamnagar Jail.

[A.L. DAVE, J.]

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